



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
(Criminal Jurisdiction)

Monday, the Third day of July Two Thousand and Twenty Three
PRESENT

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The Hon`ble Mr.Justice K.MURALI SHANKAR

CRL MP(MD) No.8986 of 2023
IN
CRL A(MD) No.848 of 2022

JOKLINE

... APPELLANT/ACCUSED

Vs

THE STATE REP.BY
THE INSPECTOR OF POLICE
NITHIRAVILAI POLICE STATION
CRIME NO.108 OF 2016.

... RESPONDENT/COMPLAINANT

Petition filed praying that in the circumstances stated therein and in the petition filed therewith the High Court may be pleased to suspend the execution of the sentence dated 28/10/2022 passed by Spl.S.C.No.7 of 2017, on the file of the learned Special Court for Exclusive Trial of Cases under POCSO ACT, Kanniyakumari at Nagercoil and enlarge the Appellant on Bail.

PRAYER IN CRL.A(MD) .848/2022:

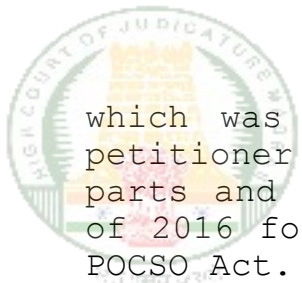
Pleased to set aside the conviction and setence imposed in the Judgment dated 28.10.2022 made in Spl.S.C.No.7 of 2017, on the file of the learned Special Court For Exclusive Trial of Cases Under POCSO ACT, Kanyakumari at Nagercoil.

Order : This petition coming up for orders on this day, upon perusing the petition filed in support thereof and upon hearing the arguments of M/S.CLEETUS W, Advocate for the petitioner and of Mr.SS.MADHAVAN, Government Advocate(crl.side) on behalf of the Respondent, the court made the following order:-

RESERVED ON	26.06.2023
PRONOUNCED ON	03.07.2023

This Criminal Miscellaneous Petition has been filed to suspend the sentence imposed on the petitioner by the learned Sessions Judge, Special Court for Exclusive Trial of Cases under POCSO Act, Kanniyakumari at Nagercoil, in Spl.S.C.No.7 of 2017, dated 28.10.2022, till the disposal of this Criminal Appeal.

2. The case of the prosecution is that the petitioner/accused was residing opposite to the house of the victim girl, who is aged 12 years and that on 22.05.2016 at about 12.00 p.m., the victim girl went to the house of the petitioner to return the TV remote unit,



which was used by the defacto complainant and at that time the petitioner misbehaved sexually with her by touching her private parts and on that basis, FIR came to be registered in Crime No.108 of 2016 for the offences under Sections 3(b), 4, 8, 9(m) and 10 of POCSO Act.

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3. The respondent police, after completing the investigation, has filed the final report for the offence under Section 5(m) r/w 6 of POCSO Act and the case was taken on file in Spl.S.C.No.7 of 2017 and the same was pending on the file of the Special Court for Exclusive Trial of Cases under POCSO Act, Kanniyakumari at Nagercoil.

4. During trial, the prosecution has examined 13 witnesses as P.W.1 to P.W.13 and exhibited 14 documents as Ex.P.1 to Ex.P.14. The defence has adduced neither oral nor documentary evidence.

5. The learned trial Judge, upon considering the evidence both oral and documentary and on hearing the arguments of both the sides, has passed the impugned judgment dated 28.10.2022 convicting the petitioner for the offence under Section 6 of POCSO Act and sentenced him to undergo 20 years Rigorous Imprisonment and to pay a fine of Rs.10,000/-, in default, to undergo 1 year Simple Imprisonment. Aggrieved by the said judgment of conviction and sentence, the accused has come forward with the present criminal appeal.

6. No doubt, the petitioner's earlier application for similar relief for suspension of sentence was ordered to be dismissed vide order dated 03.01.2023.

7. The learned counsel appearing for the petitioner would submit that there are many contradictions between the statement given by the victim girl before the investigating officer and subsequently, before the learned Judicial Magistrate, that there are many contradictions between the complaint and the depositions of the prosecution witnesses, that the complaint has been lodged after two days delay of the alleged occurrence, that the prosecution has not offered any reason or explanation for the said delay, that P.W.11-Doctor, who examined the victim girl, has given an evidence that there were no external injuries found on the victim girl and as P.W.1-mother did not agree for internal examination, no internal examination was done on the victim girl, that no identification parade was conducted by the investigating officer, that P.W.1, P.W.2, P.W.4 and P.W.6-parents and other close relatives of the victim girl are only interested witnesses and no independent witness or neighbor of the victim girl was examined and that the trial Court, without considering the above material aspects, has mechanically recorded the conviction.

8. The learned Government Advocate (Criminal Side) appearing for the respondent would submit that the victim girl was aged 12



years at the time of occurrence, that the victim girl has given categorical evidence with regard to the alleged sexual assault, that since the victim girl had started crying, the petitioner had stopped his misbehavior, that though there was a delay in registering the complaint, that by itself is not a ground to doubt the prosecution case and that too in POCSO cases and that the learned trial Judge, upon considering the entire evidence available on record in proper perspective, has rightly convicted the petitioner.

9. As rightly contended by the learned Government Advocate (Criminal Side), the points / aspects now canvassed are matter for consideration in the main appeal and the same are not sufficient enough to suspend the sentence at this point of time.

10. Considering the above facts and circumstances of the case and also the seriousness and gravity of the offence allegedly proved against the petitioner and taking note of the age of the victim girl and also the fact that the impugned judgment was passed on 28.10.2022 and the period of incarceration, this Court is not inclined to suspend the sentence imposed on the petitioner at this point of time.

11. In the result, this Criminal Miscellaneous Petition is dismissed.

sd/-

03/07/2023

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Sub-Assistant Registrar (C.S.)
Madurai Bench of Madras High Court,
Madurai - 625 023.

CSM

TO

1 THE SESSIONS JUDGE,
SPECIAL COURT FOR EXCLUSIVE TRIAL OF CASES
UNDER POCSO ACT, KANNYAKUMAR AT NAGERCOIL.

2 THE SUPERINTENDENT, CENTRAL PRISON, PALAYAMKOTTAI.

3 THE INSPECTOR OF POLICE
NITHIRAVILAI POLICE STATION.

4 THE ADDITIONAL PUBLIC PROSECUTOR,
MADURAI BENCH OF MADRAS HIGH COURT, MADURAI.

ORDER IN

CRL MP(MD) No.8986 of 2023
IN CRL A(MD) No.848 of 2022
Date :03/07/2023

SA/BUC/SAR. /12.07.2023/3P/5C